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Court of Appeals  
Division III  
State of Washington  
4/19/2019 9:54 AM

NO. 36128-4-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

JOHN LAURICELLA,  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR STEVENS COUNTY

The Honorable Patrick Monasmith, Judge

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SUPPLEMENTAL BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The state improperly imposed \$1100 in legal financial obligations, knowing Mr. Lauricella was unable to pay and without the court making inquiry.

Issues Presented on Appeal

Did the state fail to prove Mr. Lauricella could pay \$1100 in legal financial obligations where it never inquired, and where trial evidence established that Mr. Lauricella had a heart condition, was unemployed, his wife was the sole income earner and the lack of employment was very stressful to Mr. Lauricella?

B. STATEMENT OF THE CASE

a. Procedural facts

The sentencing court imposed the following legal financial obligations without inquiring into Mr. Lauricella/s ability to pay. \$500 crime victims' assessment, a \$200 filing fee reimbursement, a \$250 attorney fee reimbursement, a \$50 booking fee, and a \$100 DNA collection fee for a total \$1100 to paid at a rate of \$5 a month while Mr. Lauricella is incarcerated. CP 48-62.

b. Sentencing facts

Mr. Lauricella indicated to counsel "that he was under a lot of

stress, the family -- was not doing well financially. They were trying to get by on a single income. They had a mortgage. Things were not developing for Mr. Lauricella on his end financially or economically in terms of him contributing to the family. And there was a lot of pressure. And Ms. Lauricella was the one bringing in the income, and it was just a very tense household.” RP 333-34.

c. Heart condition

The evidence established that Mr. Lauricella has a heart condition. RP 87, 99, 107, 123-24, 140.

C. ARGUMENTS

1. REMAND FOR A NEW SENTENCING HEARING IS REQUIRED BECAUSE THE TRIAL COURT IMPOSED LEGAL FINANCIAL OBLIGATIONS WITHOUT AN INDIVIDUALIZED INQUIRY INTO LAURICELLA’S CURRENT AND FUTURE ABILITY TO PAY

Under RCW 10.01.160(3), “[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” In *State v. Blazina*, 182 Wn.2d 187, 344 P.3d 680 (2015), the Washington Supreme Court held that RCW 10.01.160(3) “requires the record to reflect that the sentence judge made an individualized inquiry into the defendant’s current and

future ability to pay before the court impose LFOs.” *Blazina*, 182 Wn.2d at 839. “This inquiry also requires the court to consider important factors, such as incarceration and a defendant’s other debts, including restitution, when determining a defendant’s ability to pay.” *Id.*

The record reflects that the sentencing court made no inquiry at all into whether Lauricella has the ability to pay. RP 333-337. But knew Lauricella was unemployed, very stressed about not having an income, had lost his home due financial issues, and had a heart condition. *Id.* Without any inquiry, the court imposed \$1100 in legal financial obligations. CP 48-62. Consequently, pursuant to *Blazina*, a remand for a new sentencing hearing is required.

2. THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN FROM THE JUDGMENT AND SENTENCE

- a. The legislature no longer permits imposition of a criminal filing fee or a sheriff service fee in indigent cases

The Legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018,

ch. 269, § 6(3). The sheriff service fee is a discretionary cost. RCW 10.01.160(1), (2). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

The legislature's decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. Here, Lauricella's case was pending on appeal after the effective date of RCW 43.43.7541. *State v. Catling*, No. 95794-1 (*en banc*) (April 18, 2019); *State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714 (2018). Accordingly, the criminal filing fee and sheriff service fee imposed must be stricken from the judgment and sentence.

D. CONCLUSION

John Lauricella respectfully requests this Court reverse his conviction for insufficient evidence and remand for vacation of all discretionary legal financial obligations.

DATED this 19<sup>th</sup> day of April 2019.

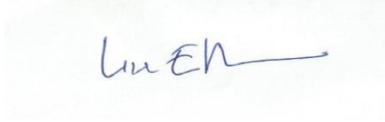
Respectfully submitted,



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LISE ELLNER, WSBA No. 20955  
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I, Lise Ellner, a person over the age of 18 years of age, served the Stevens County Prosecutor's Office [trasmussen@stevenscountywa.gov](mailto:trasmussen@stevenscountywa.gov) and John Lauricella/DOC#408516, Washington State Penitentiary 1313 North 13th Avenue, Walla Walla, WA 99362a true copy of the document to which this certificate is affixed on April 19, 2019. Service was made by electronically to the prosecutor and John Lauricella by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink, appearing to read "Lise Ellner", is written on a light-colored rectangular background.

\_\_\_\_\_  
Signature

**LAW OFFICES OF LISE ELLNER**

**April 19, 2019 - 9:54 AM**

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